

AUG 18 2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

David M. Skinlo

Serial No: 10/665,687

Filed: September 17, 2003

For: ELECTRIC STORAGE BATTERY
 CONSTRUCTION AND METHOD OF
 MANUFACTURE

Mail Stop Amendment
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Art Unit: 1795

Examiner: Hodge, Robert W.

PETITION TO WITHDRAW A RESTRICTION REQUIREMENT UNDER 37 C.F.R. §1.144

Dear Sir:

Petition is Timely Filed

This Petition under 37 CFR §1.144 is a Petition to withdraw a Restriction Requirement in response to an Advisory Action mailed on August 5, 2010. 37 CFR §1.144 provides that the filing of a Petition under 37 C.F.R. §1.144 can be deferred until after a final action on the claims but must be filed before an appeal. Since this Petition under 37 C.F.R. §1.144 is being filed before an appeal, this Petition is timely filed.

The Applicant Satisfied the Traversal Requirement

37 CFR §1.144 and MPEP §821.01 requires that the Applicant traverse the Restriction Requirement in order to preserve the right to file this Petition under 37 CFR §1.144. The Applicant has satisfied this requirement. For instance, the Restriction Requirement was set forth in an Office Action mailed on July 13, 2010. The Applicant filed a Response on July 21, 2010 which included a traversal. The traversal submitted on July 21, 2010 is copied into the below Appendix A.

37 CFR §1.144 and MPEP §821.01 also requires that the examiner make the Restriction Requirement final in the next Office Action. The Advisory Action mailed on August 5, 2010

responded to the Applicant's traversal and makes the Restriction Requirement final. As a result, the filing of this Petition at this time is proper.

Restriction

The Applicant filed an Amendment on April 27, 2010. In this Amendment, the Applicant added new claim 90, which depended from claim 68, which in turn depended from claim 43.

Claims 43, 68, and 90 are as follows:

43. (previously presented) An electric storage battery, comprising:

a case sealed by a first end cap and a second end cap;

an electrically conductive terminal pin extending through the first end cap and electrically insulated from the case;

an electrode assembly disposed within the case, the electrode assembly includes an electrode in electrical communication with the pin and an electrode electrically insulated from the pin;

a flexible conductive tab electrically coupled to the electrode that is electrically insulated from the pin,

the tab extending from a first location adjacent to the case to a second location,

the second location being further from the first location than a centerpoint of the second end cap is from the first location,

the tab being immobilized relative to the second end cap at the second location but not being immobilized relative to the second end cap over the entire distance from the first location to the second location.

68. (previously presented) The battery of claim 43, wherein the electrodes are electrode strips wound around the pin so as to form a spiral role on the pin.

90. (previously presented) The battery of claim 68; wherein the tab is connected to the second end cap such that the second end cap can be removed from the case and with the electrode assembly still positioned in the case the second end cap be positioned perpendicular to an end of

the case with the tab extending through the end and the case being located between the tab and the second end cap.

The Office Action (mailed July 13, 2010) send immediately after the addition of claim 90 responded to the addition of claim 90 by applying a Restriction Requirement to claim 90. In particular, the Office Action argued that claim 90 is directed to a method of disassembling a battery and that such a method was not elected in response to the Restriction Requirement mailed on March 7, 2007.

The problem with this restriction requirement is that Claim 90 recites a battery. For instance, claim 90 recites "the battery of claim 68." Further, the limitations recited in claim 90 are structural limitations. For instance, the claim 90 includes the following language: "the tab is connected to the second end cap such that..." This language limits the structural relationship between the tab and the cap. Accordingly, claim 90 is directed to a battery and properly narrows the battery that is recited in claim 43.

Since claim 90 is not directed to a method, and is directed to elected subject matter, the Applicant requests rejoinder of claim 90.

APPENDIX A

Traversal of Restriction Requirement

The pending Office Action includes a Restriction Requirement with respect to claim 90.

Upon receipt of the Advisory Action, the Applicant will be re-entering this Application into the Appeals process. However, the Applicant will also be submitting a Petition to Withdraw this Restriction Requirement Under 37 C.F.R. §1.144. In order to submit this, the Applicant needs the Restriction Requirement to be made final. As a result, the following is a traversal of the Restriction Requirement.

The Restriction Requirement is based on an argument that 90 is directed to a method of disassembling a battery. Claim 90 recites a battery. For instance, claim 90 recites "the battery of claim 68." Further, the limitations recited in claim 90 are structural limitations. For instance, the claim 90 includes the following language: "the tab is connected to the second end cap such that..." This language limits the structural relationship between the tab and the cap. Accordingly, claim 90 is directed to a battery and properly narrows the battery of claim 43.

Since claim 43 is not directed to a method, the Applicant requests rejoinder of claim 90.



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